



Billing Code 3410-10

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

7 CFR Part 1590

RIN 0551-AA87

Local and Regional Food Aid Procurement Program

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Final rule with request for comments.

SUMMARY: This document establishes rules to govern the award of funds by the Foreign Agricultural Service (FAS) to recipients under the USDA Local and Regional Food Aid Procurement Program (USDA LRP Program). Section 3206 of the Food, Conservation, and Energy Act of 2008, as amended by the Agricultural Act of 2014, provides that the Secretary of Agriculture will provide grants to, or enter into cooperative agreements with, eligible organizations to implement field-based projects that consist of local or regional procurements of eligible commodities in developing countries to provide development assistance and respond to food crises and disasters. The intended effects of the USDA LRP Program are to support development activities aimed at strengthening the trade capacity of food-insecure developing countries and to address the cause of chronic food insecurity. The regulation also addresses how emergency programming will be addressed.

DATES: Effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

Comment Dates: Written comments must be received by FAS or carry a postmark or equivalent no later than [Insert date 60 days after publication in the FEDERAL REGISTER].

ADDRESSES: Submit comments to:

- Federal Rulemaking Portal: Go to <http://www.regulations.gov>. Follow the instructions for submitting comments.
- Director, Food Assistance Division, Office of Capacity Building and Development, Foreign Agricultural Service, 1400 Independence Ave., S.W. STOP 1034, Washington, D.C. 20250.

FOR FURTHER INFORMATION CONTACT: Director, Food Assistance Division, Office of Capacity Building and Development, Foreign Agricultural Service, 1400 Independence Ave., S.W. STOP 1034, Washington, D.C. 20250. Telephone: (202) 720-4221; Fax: (202) 690-0251; Email: FAD_Contact@fas.usda.gov.

SUPPLEMENTARY INFORMATION

Background

Overview

Section 3206 of the Food, Conservation, and Energy Act of 2008 (the “2008 Farm Bill”), as amended by the Agricultural Act of 2014 (the “2014 Farm Bill”), provides that the Secretary of Agriculture will establish a program to provide grants to, or enter into cooperative agreements with, eligible organizations to procure locally or regionally produced commodities to respond to food crises and disasters. International nongovernmental organizations (NGOs) and intergovernmental organizations, like the World Food Program (WFP), have successfully utilized local and regional procurement

over the last decade. Local and regional procurement, which has increasingly become a key element in the multilateral food aid response, is used to purchase food in countries affected by disasters and food crises or in a different country within the same region.

Currently many bilateral food assistance donors have shifted from commodity-based in-kind food aid to a cash-based food assistance program. The World Food Program has cited that the use of cash-based programs enables NGOs and intergovernmental organizations to purchase food locally or regionally in order to deliver assistance to beneficiaries quickly and cost-effectively, while also providing development benefits to local communities by strengthening agricultural markets where the food is purchased.

Several academic and other studies have cited significant cost and time savings for certain commodities and in certain areas.¹ For example, GAO found that in Sub-Saharan Africa, local procurement cost about 34 percent less than similar in-kind U.S. food aid shipments. Some studies cited by the Government Accountability Office noted that large cash purchases in some developing countries could have detrimental effects on local market conditions if not carefully done. In cases where local purchases might substantially raise local market prices, in-kind donations of commodities may be more beneficial. Similarly, GAO and others have noted that in-kind donations can also have

¹ See, for example, Erin C. Lentz, Simone Passarelli, Christopher B. Barrett, "The Timeliness and Cost-Effectiveness of the Local and Regional Procurement of Food Aid," *World Development*, Available online 1 March 2013, ISSN 0305-750X, 10.1016/j.worlddev.2013.01.017; Barrett, Christopher B., Samuel D. Bell, Teevrat Garg, Miguel I. Gomez, Aurélie P. Harou, Erin C. Lentz, Simone Passarelli, Joanna B. Upton and William J. Violette. "Final Report: A Multidimensional Analysis of Local and Regional Procurement of US Food Aid," January 2012. Cornell University; and General Accountability Office, Local and Regional Procurement Can Enhance the Efficiency of U.S. Food Aid, but Challenges May Constrain Its Implementation, GAO-09-570: Published: May 29, 2009. Publicly Released: Jun 4, 2009, <http://www.gao.gov/products/GAO-09-570>. Appendix VI of the GAO report includes a review of literature on local and regional procurement.

detrimental effects depending on local market conditions, depressing local farmers' prices if not carefully done. As the largest international food aid donor, contributing over half of all global food aid supplies to alleviate hunger and support development, the United States plays an important role in responding to food assistance needs and ensuring global food security. U.S. international food assistance programs must maintain flexibility and use the approach that best serves the in-country food security situation.

The USDA LRP Program adds another mechanism to deliver food assistance to the federal programs currently providing assistance, including Title II of the Food for Peace Act and International Disaster Assistance under the Foreign Assistance Act of 1961, both of which currently utilize local and regional procurement and are administered by the U.S. Agency for International Development, and USDA's Food for Progress Program and McGovern-Dole International Food for Education and Child Nutrition ("McGovern-Dole") Program. The USDA LRP Program aims to support development activities to strengthen the capacity of food-insecure developing countries and address the cause of chronic food insecurity. Other objectives of the USDA LRP Program are to support the consumption of locally produced food and strengthen local value chains and all associated procurement activities. The USDA LRP Program will focus primarily on development programs, although the rule also provides for the furnishing of food assistance through an emergency response. Given the role of the United States Agency for International Development (USAID) as the lead agency in the provision of U.S. emergency humanitarian assistance, any emergency response will be determined in consultation with the USAID Administrator, as provided for in section 3206(b)(2) of the

2008 Farm Bill, as amended, to ensure programs address the highest priority needs only and are not duplicative.

Lessons from Pilot Program

The 2008 Farm Bill, as enacted on June 18, 2008, authorized and funded a pilot program (the USDA LRP pilot program) to test different approaches and study practical lessons regarding the timeliness, cost effectiveness, impacts on market, and quality and other benefits of locally procured food assistance. Twenty-one local and regional procurement pilot projects were funded in nineteen countries. An independent evaluation that examined the activities of the final twenty projects in eighteen countries (due to the cancellation of one project) demonstrated that locally procured food assistance can provide food assistance at lower cost, with a shorter delivery time, and in some cases has other development benefits. The full evaluation can be viewed at <http://www.fas.usda.gov/newsroom/local-and-regional-food-aid-procurement-pilot-project-independent-evaluation-report>.

To address food safety and quality and market sensitivities, the USDA LRP Program will build capacity to meet quality standards and product specifications to ensure food safety and nutritional content within each project and with its beneficiaries. To address market sensitivities around local and regional purchases, the USDA LRP Program will work with its recipients to improve the reliability and utility of market intelligence in areas where the USDA LRP Program is implemented, seeking to ensure that the USDA LRP Program minimizes potential adverse impacts and maximizes potential benefits.

Program Essentials

The 2008 Farm Bill, as amended by the 2014 Farm Bill, authorizes the Secretary to provide grants to, or enter into cooperative agreements with, eligible organizations to implement international field-based projects that consist of local or regional procurements of eligible commodities to fill nutritional gaps for targeted populations and respond to food availability gaps generated by unexpected emergencies. The USDA LRP program will use the local or regional procurement of commodities for distribution in developing countries to complement existing food aid programs, giving preference to the McGovern-Dole Program. The Food and Agricultural Organization of the United Nations states that there is global consensus recognizing child nutrition as an essential element to improve not only the health and well-being of children around the world, but also the social and economic development of communities and countries. Under the USDA LRP Program, FAS will provide grants to, or enter into cooperative agreements with, private voluntary organizations, cooperatives, and the World Food Program to undertake activities such as strengthening value chains and other procurement activities.

The USDA LRP Program will be used for development projects, and focus on supplementing U.S. commodity purchases through the McGovern-Dole Program. The USDA LRP Program will focus on developing appropriate supply chains for the procurement of commodities from local producers. School meals using locally purchased foods will add locally known varieties to the meals, which may make them more appealing to the children and help increase nutrition. In cases where supply chains need to be strengthened in order to support a workable and reliable supply of food for the McGovern-Dole Program, the USDA LRP Program can work with producers, school authorities, and local municipalities in communities around schools to provide technical

and management expertise to build reliable supply systems, as well as to procure commodities.

The USDA LRP Program will aim to strengthen rural farm communities economically and incentivize school attendance in order to improve education, while at the same time work with host country governments to build a type of safety net for those populations in great need. For example, this type of programing can address multiple issues in many developing countries, of which many have large, agricultural based economies with rural populations in need of education and market opportunities.

Notice and Comment

This rule is being issued as a final rule without prior notice and opportunity for comment. The Administrative Procedure Act exempts rules “relating to agency management or personnel or to public property, loans, grants, benefits, or contracts” from the statutory requirement in 5 U.S.C. 553, which includes the requirement for prior notice and opportunity for comment (5 U.S.C. 553(a)(2)). However, members of the public may participate in this rulemaking by submitting written comments, data, or views. FAS will consider the comments received and may conduct additional rulemaking based on the comments. Written comments must be received by FAS or carry a postmark or equivalent no later than 60 days after publication of this rule in the Federal Register.

Effective Date

The Administrative Procedure Act (5 U.S.C. 553) provides generally that before rules are issued by Government agencies, the rule must be published in the Federal Register, and the required publication of a substantive rule is to be not less than 30 days before its effective date. However, noted above, one of the exceptions is that section 553 does not

apply to rulemaking that involves a matter relating to benefits. Therefore, because this rule relates to benefits, this final rule is effective when published in the Federal Register. This will allow us to provide greater access to local and regional procured food aid as soon as possible during the 2016 school year.

Catalog of Federal Domestic Assistance

The program covered by this regulation is listed in the Catalog of Federal Domestic Assistance (CFDA) under the following FAS CFDA number: 10.612, USDA LRP Program.

Paperwork Reduction Act of 1995

In accordance with the Paperwork Reduction Act of 1995, the following new information collection request that supports USDA's Local and Regional Food Aid Procurement Program was submitted to OMB for emergency approval. FAS is requesting comments from interested individuals and organizations on the information collection activities related to USDA's Local and Regional Food Aid Procurement application process and reporting requirements.

Title: USDA's Local and Regional Food Aid Procurement Program

OMB Control Number: 0551-New.

Type of Request: New Collection.

Abstract: Under the USDA Local and Regional Food Aid Procurement Program, information will be gathered from applicants desiring to receive grants or enter into cooperative agreements under the USDA LRP Program to determine the viability of requests for resources to implement activities in foreign countries. Recipients of grants or cooperative agreements under the USDA LRP Program must submit performance and

financial reports until funds provided by FAS and commodities purchased with such funds are utilized. Documents are used to develop effective grant or cooperative agreements and assure that statutory requirements and program objectives are met.

Estimate of Burden: The public reporting burden for each respondent resulting from information collection under the USDA Local and Regional Food Aid Procurement Program varies in direct relation to the number and type of agreements entered into by such respondent. The estimated average reporting burden for USDA Local and Regional Food Aid Procurement Program is 78 hours per response.

Type of Respondents: Private voluntary organizations, cooperatives, and intergovernmental organizations.

Estimated Number of Respondents: 22 per annum.

Estimated Number of Responses per Respondent: 17 per annum.

Estimated Total Annual Burden of Respondents: 29,172 hours.

Copies of this information collection can be obtained from Connie Ehrhart, the Agency Information Collection Coordinator, at (202) 690-1578 or e-mail at Connie.Ehrhart@fas.usda.gov.

Request for Comments: Send comments regarding (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated, electronic, mechanical, or other technological

collection techniques or other forms of information technology. Comments may be sent to:

- Federal Rulemaking Portal: Go to <http://www.regulations.gov>. Follow the instructions for submitting comments.
- Director, Food Assistance Division, Office of Capacity Building and Development, Foreign Agricultural Service, 1400 Independence Ave., S.W. STOP 1034, Washington, D.C. 20250.

All comments received in response to this notice, including names and addresses when provided, will be a matter of public record. Comments will be summarized and included in the submission for Office of Management and Budget approval.

On February 16, 2016, FAS published in the Federal Register a notice entitled “Notice of Request for Approval of a New Information Collection” at 81 FR 7742. This notice included a 60 day comment period for interested individuals to provide comments on the information collection burden of the USDA LRP Program. As such, the notice duplicates the request for comments above pertaining to the information collection burden of the USDA LRP Program. Interested parties may provide comments on the information collection burden either by providing comments on this rule or on the Federal Register notice that was published on February 16, 2016. It is not necessary to provide comments on both documents.

E-Government Act Compliance

FAS is committed to complying with the E-Government Act of 2002 (44 U.S.C. chapter 36), to promote the use of the Internet and other information technologies to provide increased opportunities for citizens’ access to Government information and services, and

for other purposes.

Executive Orders 12866 and 13563

Executive Order 12866, “Regulatory Planning and Review,” and Executive Order 13563, “Improving Regulation and Regulatory Review,” direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

The Office of Management and Budget (OMB) designated this rule as significant under Executive Order 12866, “Regulatory Planning and Review,” and therefore, OMB has reviewed this rule. The costs and benefits of this final rule are summarized below. The full cost benefit analysis is available on [regulations.gov](http://www.regulations.gov).

Summary of Economic Impacts

The economic benefits of local and regional procurement have been identified in a number of studies² in addition to the USDA LRP pilot program during the period of 2009-2012, the results of which are documented in an independent evaluation report (<http://www.fas.usda.gov/newsroom/local-and-regional-food-aid-procurement-pilot-project-independent-evaluation-report>). For example, the results of the USDA LRP pilot program included: cost savings in transport, shipping, and handling; better match between recipients’ needs and program commodity availability; and time savings between the procurement and delivery of food, which is especially important in

² See, for example, the references included in footnote 1.

emergency situations. Since commodities purchased under the USDA LRP pilot program did not need to be shipped across oceans and were purchased nearer the final destination, the transport, shipping, and handling costs were on average lower than in-kind food assistance. In projects where recipients were children, improved commodity match resulted in more of the food provided being consumed, yielding nutritional gains. Delivery times for emergency food aid under the USDA LRP pilot program yielded faster delivery than in-kind food aid shipped from the United States. As a result of the USDA LRP pilot program, small-scale producers and suppliers began pooling resources to achieve economies of scale to increase their profitability. The USDA LRP Program is intended to maximize the impact of food assistance, consistent with the positive results achieved under the USDA LRP pilot program.

Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12988. This rule does not preempt State or local laws, regulations, or policies unless they present an irreconcilable conflict with this rule. This rule will not be retroactive.

Executive Order 12372

Executive Order 12372, “Intergovernmental Review of Federal Programs,” requires consultation with officials of State and local governments that would be directly affected by the proposed Federal financial assistance. The objectives of the Executive Order are to foster an intergovernmental partnership and a strengthened federalism by relying on State and local processes for the State and local government coordination and review of proposed Federal financial assistance and direct Federal development. This rule will not

directly affect State or local officials and, for this reason, it is excluded from the scope of Executive Order 12372.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601–612), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, generally requires an agency to prepare a regulatory flexibility analysis of any rule that is subject to notice and comment rulemaking under the Administrative Procedure Act (APA) or any other law, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The Regulatory Flexibility Act does not apply to this rule because FAS is not required by the APA or any other law to publish a notice of proposed rulemaking with respect to the subject matter of the rule. FAS is unaware of any possible negative effects for U.S. small entities as a result of the USDA LRP Program.

Executive Order 13132

This rule has been reviewed under Executive Order 13132, “Federalism.” This rule will not have any substantial direct effect on States, on the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government, except as required by law. This rule does not impose substantial direct compliance costs on State and local governments. Therefore, consultation with the States was not required.

Executive Order 13175

This rule has been reviewed in accordance with the requirements of Executive Order 13175, “Consultation and Coordination with Indian Tribal Governments.” Executive Order 13175 requires Federal agencies to consult and coordinate with tribes on a

government-to-government basis on policies that have tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. FAS does not expect this rule to have any effect on Indian tribes.

Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) does not apply to this rule because it does not impose any enforceable duty or contain any unfunded mandate as described under the UMRA.

List of Subjects in 7 CFR part 1590

Food assistance programs, Grant programs-agriculture, Technical assistance, Local and regional procurement.

For the reasons stated in the preamble, the Foreign Agricultural Service amends 7 CFR chapter XV by adding part 1590 to read as follows:

PART 1590 – UNITED STATES DEPARTMENT OF AGRICULTURE LOCAL AND REGIONAL FOOD AID PROCUREMENT PROGRAM

Sec.

1590.1 Purpose and applicability.

1590.2 Definitions.

1590.3 Eligibility and conflicts of interest.

1590.4 Application process.

1590.5 Agreements.

1590.6 Procurement of eligible commodities.

- 1590.7 Payments.
- 1590.8 Transportation of procured commodities.
- 1590.9 Entry, handling, and labeling of commodities and notification requirements.
- 1590.10 Damage to or loss of procured commodities.
- 1590.11 Claims for damage to or loss of procured commodities.
- 1590.12 Use of procured commodities, FAS-provided funds, and program income.
- 1590.13 Monitoring and evaluation requirements.
- 1590.14 Reporting and record keeping requirements.
- 1590.15 Subrecipients.
- 1590.16 Noncompliance with an agreement.
- 1590.17 Suspension and termination of agreements.
- 1590.18 Opportunities to object and appeals.
- 1590.19 Audit requirements.
- 1590.20 Paperwork Reduction Act.

Authority: 7 U.S.C. 1726c

§ 1590.1 Purpose and applicability.

(a)(1) This part sets forth the general terms and conditions governing the award of funds by the Foreign Agricultural Service (FAS) to recipients under the U.S. Department of Agriculture (USDA) Local and Regional Food Aid Procurement Program (USDA LRP Program). Under the USDA LRP Program, recipients use FAS-provided funds to purchase eligible commodities in developing countries and pay for associated administrative and operational costs related to the implementation of field-based projects in a foreign country pursuant to an agreement with FAS.

(2) Funds provided by FAS under the USDA LRP Program may be used to provide food assistance in the form of development assistance, an emergency response, or both through a field-based project. Field-based projects intended to provide development assistance will be implemented for a period of not less than one year. Food assistance may be provided under the USDA LRP Program through local and regional procurement, food vouchers, and cash transfers.

(3) FAS will consult with the United States Agency for International Development in the development and implementation of field-based projects that will provide food assistance in the form of an emergency response.

(b)(1) The Office of Management and Budget (OMB) issued guidance on Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards at 2 CFR part 200. In 2 CFR 400.1, USDA adopted OMB's guidance in subparts A through F of 2 CFR part 200, as supplemented by 2 CFR part 400, as USDA's policies and procedures for uniform administrative requirements, cost principles, and audit requirements for federal awards.

(2) The OMB guidance at 2 CFR part 200, as supplemented by 2 CFR part 400 and by this part, applies to the USDA LRP Program, except as provided in paragraph (e) of this section.

(c) Except as otherwise provided in this part, other regulations that are generally applicable to grants and cooperative agreements of USDA, including the applicable regulations set forth in 2 CFR chapters I, II, and IV, also apply to the USDA LRP Program.

(d) In accordance with 7 U.S.C. 1726c(a)(4), assistance under the USDA LRP Program may be provided to a private voluntary organization or a cooperative that is, to the extent practicable, registered with the Administrator of the U.S. Agency for International Development or to an intergovernmental organization, such as the World Food Program.

(e)(1) The OMB guidance at subparts A through E of 2 CFR part 200, and the corresponding provisions of 2 CFR part 400 and of this part, apply to all awards by FAS under the USDA LRP Program to all recipients that are private voluntary organizations or cooperatives, including a private voluntary organization that is a foreign organization, as defined in 2 CFR 200.47, and a cooperative that is a for-profit entity or a foreign organization. Subpart F of 2 CFR part 200, and the corresponding provisions of 2 CFR part 400 and this part, apply only to awards by FAS to recipients that are private voluntary organizations or non-profit cooperatives but that are not foreign organizations. The OMB guidance at 2 CFR part 200, and the provisions of 2 CFR part 400 and of this part, do not apply to an award by FAS under the USDA LRP Program to a recipient that is a foreign public entity, as defined in 2 CFR 200.46, and, therefore, they do not apply to an intergovernmental organization.

(2) The OMB guidance at subparts A through E of 2 CFR part 200, and the corresponding provisions of 2 CFR part 400 and of this part, apply to all subawards to all subrecipients under this part, except in cases:

- (i) Where the subrecipient is a foreign public entity; or
- (ii) Where FAS determines that the application of these provisions to a subaward to a subrecipient that is a foreign organization would be inconsistent with the

international obligations of the United States or the statutes or regulations of a foreign government or would not be in the best interest of the United States.

§ 1590.2 Definitions.

These are definitions for terms used in this part. The definitions in 2 CFR part 200, as supplemented in 2 CFR part 400, are also applicable to this part, with the exception that, if a term that is defined in this section is defined differently in 2 CFR part 200 or part 400, the definition in this section will apply to such term as used in this part.

Activity means a discrete undertaking within a project to be carried out by a recipient, directly or through a subrecipient, that is specified in an agreement and is intended to fulfill a specific objective of the agreement.

Agreement means a legally binding grant or cooperative agreement entered into between FAS and a recipient to implement a field-based project under the USDA LRP Program.

Codex Alimentarius means the program of the United Nations Food and Agriculture Organization and the World Health Organization that was created to develop food standards, guidelines, and related texts, such as codes of practice to protect the health of consumers, ensure fair trade practices in the food trade, and promote the coordination of all food standards work undertaken by international governmental and nongovernmental organizations.

Cooperative means a private sector organization whose members own and control the organization and share in its services and its profits and that provides business services and outreach in cooperative development for its membership.

Cost sharing or matching means the portion of project expenses, or necessary goods and services provided to carry out the project, not paid or acquired with Federal funds. The term may include cash or in-kind contributions provided by recipients, subrecipients, foreign public entities, foreign organizations, or private donors.

Country of origin means the country in which the procured commodities were produced.

Developing country means a country that has a shortage of foreign exchange earnings and has difficulty meeting all of its food needs through commercial channels.

Development assistance means an activity or activities that will enhance the availability of, access to, or the utilization of adequate food to meet the caloric and nutritional needs of populations suffering from chronic food insecurity, or enhance the ability of such populations to build assets to protect against chronic food insecurity.

Disaster means an event or a series of events that creates a need for emergency food assistance by threatening or resulting in significantly decreased availability of, or access to, food or the erosion of the ability of populations to meet food needs. Disasters include, but are not limited to, natural events such as floods, earthquakes, and drought; crop failure; disease; civil strife and war; and economic turmoil. Disasters can be characterized as slow or rapid-onset. The situation caused by a disaster is a “food crisis.”

Disburse means to make a payment to liquidate an obligation.

Eligible commodity means an agricultural commodity, or the product of an agricultural commodity, that is produced in and procured from a developing country, and that meets

each nutritional, quality, and labeling standard of the target country, as determined by the Secretary of Agriculture, as well as any other criteria specified in section § 1590.6(b) .

Emergency response means an activity that is designed to meet the urgent food and nutritional needs of those affected by acute or transitory food insecurity as a result of a disaster.

FAS means the Foreign Agricultural Service of the United States Department of Agriculture.

FAS-provided funds means U.S. dollars provided under an agreement to a recipient, or through a subagreement to a subrecipient, for expenses for the purchase, ocean and overland transportation, and storage and handling of the procured commodities; expenses involved in the administration, monitoring, and evaluation of the activities under the agreement; and operational costs related to the implementation of the field-based project under the agreement.

Field-based project or project means the totality of the activities to be carried out by a recipient, directly or through a subrecipient, to fulfill the objectives of an agreement. It can either stand alone or be an add-on component to another program that provides other forms of assistance to the food insecure.

Food assistance means assistance that is provided to members of a targeted vulnerable group to meet their food needs.

Local procurement means the procurement of food by a recipient, directly or through a subrecipient, in the target country to assist beneficiaries within that same country. The use of food vouchers to obtain food under an agreement is a form of local procurement.

Overland transportation means any transportation other than ocean transportation. It includes internal transportation within the target country and regional transportation within the target region.

Private voluntary organization means a not-for-profit, nongovernmental organization (in the case of a United States organization, an organization that is exempt from Federal income taxes under section 501(c)(3) of the Internal Revenue Code of 1986) that receives funds from private sources, voluntary contributions of money, staff time, or in-kind support from the public, and that is engaged in or is planning to engage in voluntary, charitable, or development assistance activities (other than religious activities).

Procured commodities means the eligible commodities that are procured by a recipient, directly or through a subrecipient, under an agreement.

Program Income means funds received by a recipient or subrecipient as a direct result of carrying out an approved activity under an agreement. The term includes but is not limited to income from fees for services performed, the use or rental of real or personal property acquired under a Federal award, the sale of items fabricated under a Federal award, license fees, and royalties on patents and copyrights, and principal and interest on loans made with Federal award funds. Program income does not include FAS-provided

funds or interest earned on such funds; or funds provided for cost sharing or matching contributions, refunds or rebates, credits, discounts, or interest earned on any of them.

Purchase country means a developing country in which the procured commodities are purchased.

Recipient means an entity that enters into an agreement with FAS and receives FAS-provided funds to carry out activities under the agreement. The term recipient does not include a subrecipient.

Regional procurement means the procurement of food by a recipient, directly or through a subrecipient, in a developing country that is located on the same continent as the target country. Regional procurement does not include the purchase of food in the target country.

Subrecipient means an entity that enters into a subagreement with a recipient for the purpose of implementing in the target country activities described in an agreement. The term does not include an individual that is a beneficiary under the agreement.

Target country means the developing country in which activities are implemented under an agreement.

Target region means the continent on which the target country is located or nearby.

USDA means the United States Department of Agriculture.

Voluntary committed cost sharing or matching contributions means cost sharing or matching contributions specifically pledged on a voluntary basis by an applicant in its proposal, which become binding as part of an agreement. Voluntary committed cost sharing or matching contributions may be provided in the form of cash or in-kind contributions.

§ 1590.3 Eligibility and conflicts of interest.

(a)(1) A private voluntary organization or a cooperative is eligible to submit an application under this part to become a recipient under the USDA LRP Program if it is either registered with the Administrator of the U.S. Agency for International Development or FAS has determined that such registration is impracticable. FAS will set forth specific eligibility information, including any factors or priorities that will affect the eligibility of an applicant or application for selection, in the full text of the applicable notice of funding opportunity posted on the U.S. Government web site for grant opportunities.

(2) FAS may give preference for funding to eligible entities that have, or are working toward, projects under the McGovern-Dole International Food for Education and Child Nutrition Program established under section 3107 of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 1736o–1).

(b) Applicants, recipients, and subrecipients must comply with policies established by FAS pursuant to 2 CFR 400.2(a), and with the requirements in 2 CFR 400.2(b), regarding conflicts of interest.

§ 1590.4 Application process.

(a) An applicant seeking to enter into an agreement with FAS must submit an application, in accordance with this section, that sets forth its proposal to carry out activities under the USDA LRP Program in a proposed target country(ies). An application must contain the items specified in paragraph (b) of this section and any other items required by the notice of funding opportunity and must be submitted electronically to FAS at the address set forth in the notice of funding opportunity.

(b) An applicant must include the following items in its application:

(1) A completed Form SF-424, which is a standard application for Federal assistance;

(2) An introduction and impact analysis, as specified in the notice of funding opportunity;

(3) A plan of operation that contains the elements specified in the notice of funding opportunity;

(4) A summary line item budget and a budget narrative that indicate:

(i) The amount(s) of any FAS-provided funds, program income, and voluntary committed cost sharing or matching contributions that the applicant proposes to use to fund:

(A) Administrative costs;

(B) Commodity procurement costs, including costs for locally and regionally procured commodities, and food vouchers;

(C) Transportation, storage, and handling costs; and

(D) Activity costs;

(ii) Where applicable, how the applicant's indirect cost rate will be applied to each type of expense; and

(iii) The amount of funding that will be provided to each proposed subrecipient under the agreement;

(5) A project-level results framework that outlines the changes that the applicant expects to accomplish through the proposed project and is based on the USDA LRP Program-level results framework;

(6) Unless otherwise specified in the notice of funding opportunity, an evaluation plan that describes the proposed design, methodology, and time frame of the project's evaluation activities, and how the applicant intends to manage these activities, and that will include a baseline study, interim evaluation, final evaluation, and any applicable special studies; and

(7) Any additional required items set forth in the notice of funding opportunity.

(c) Each applicant (unless the applicant has an exception approved by FAS under 2 CFR 25.110(d)) is required to:

(1) Be registered in the System for Award Management (SAM) before submitting its application;

(2) Provide a valid unique entity identifier in its application; and

(3) Continue to maintain an active SAM registration with current information at all times during which it has an active Federal award or an application or plan under consideration by a Federal awarding agency.

§ 1590.5 Agreements.

(a) After FAS approves a proposal by an applicant, FAS will negotiate an agreement with the applicant. The agreement will set forth the obligations of FAS and the recipient.

(b) The agreement will specify the general information required in 2 CFR 200.210(a), as applicable.

(c) The agreement will incorporate general terms and conditions, pursuant to 2 CFR 200.210(b), as applicable.

(d) To the extent that this information is not already included in the agreement pursuant to paragraphs (b) and (c) of this section, the agreement will also include the following:

(1) A plan of operation, which will include the following:

(i) The objectives to be accomplished under the project;

(ii) A detailed description of each activity to be implemented;

(iii) The target country(ies) and the areas of the target country(ies) in which the activities will be implemented;

(iv) The method(s) and criteria for selecting the beneficiaries of the activities;

(v) Any contributions for cost sharing or matching, including cash and non-cash contributions, that the recipient expects to receive from non-FAS sources that:

(A) Are critical to the implementation of the activities; or

(B) Enhance the implementation of the activities;

(vi) Any subrecipient that will be involved in the implementation of the activities, and the criteria for selecting a subrecipient that has not yet been identified;

(vii) Any other governmental or nongovernmental entities that will be involved in the implementation of the activities; and

(viii) Any additional items specified by FAS during the negotiation of the agreement;

(2) Requirements relating to the procurement of the eligible commodities, as set forth in § 1590.6;

(3) A budget, which will set forth the maximum amounts of FAS-provided funds, program income, and voluntary committed cost sharing or matching contributions that may be used for each line item; and

(4) Performance goals for the agreement, including a list of results to be achieved by the activities and corresponding indicators, targets, and time frames.

(e) The agreement will also include specific terms and conditions, and certifications and representations, including the following:

(1) The agreement will prohibit the use of the procured commodities, food vouchers, or cash transfers for any purpose other than food assistance;

(2) The agreement will prohibit the resale or transshipment of the procured commodities by the recipient to a country other than the target country specified in the agreement for so long as the recipient has title to such commodities;

(3) The recipient will assert that it has taken action to ensure that any eligible commodities that will be procured regionally will be imported free from all customs, duties, tolls, and taxes. The recipient must submit information to FAS to support this assertion;

(4) The recipient will assert that, to the best of its knowledge, the eligible commodities can be procured locally or regionally without a disruptive impact on farmers located in, or the economy of, the target country or any country in the target region. The recipient will also assert that, to the best of its knowledge, the eligible commodities can be procured without unduly disrupting world prices for agricultural commodities or normal patterns of commercial trade with foreign countries. The recipient must submit information to FAS to support these assertions; and

(5) The recipient will assert that adequate transportation and storage facilities are available in the target country to prevent spoilage or waste of the eligible commodities. The recipient must submit information to FAS to support these assertions.

(f) FAS may enter into a multicountry agreement.

(g) FAS may provide funds under a multiyear agreement contingent upon the availability of funds.

§ 1590.6 Procurement of eligible commodities.

(a)(1) When using funds provided by FAS under the USDA LRP Program to make a local or regional procurement of food, including through the use of food vouchers, the recipient, or a subrecipient, must procure eligible commodities.

(2) The agreement will specify the types of eligible commodities approved for procurement; the approved purchase country(ies); and the approved method(s) of procurement (local procurement, regional procurement, food vouchers, or a combination of these methods). The agreement will prohibit the recipient from procuring eligible commodities from any country not specified in the agreement or utilizing methods of procurement that differ from those approved in the agreement.

(b) In carrying out an agreement, the recipient must comply with the following requirements, as applicable, relating to the procurement of eligible commodities under the agreement:

(1) The recipient must procure eligible commodities at a reasonable market price with respect to the economy of the purchase country, as determined by FAS.

(2) If the recipient procures eligible commodities that are grains, legumes, and pulses, the commodities must meet the food safety standards of the target country; provided, however, that if the target country does not have food safety standards for grains, legumes, and pulses, then the recipient must ensure that such commodities meet the Codex Alimentarius Recommended International Code of Practice: General Principles of Food Hygiene CAC/RCP 1-1969 Rev 4 - 2003, including Annex *Hazard Analysis and Critical Control Point (HACCP) System and Guidelines*.

(3) If the recipient procures eligible commodities that are food products other than grains, legumes or pulses, such as processed foods, fortified blended foods, and enriched foods, the commodities must comply, in terms of raw materials, composition, or manufacture, unless otherwise specified in the agreement, with the Codex Alimentarius Recommended International Code of Practice: General Principles of Food Hygiene CAC/RCP 1-1969 Rev 4 - 2003 including Annex *Hazard Analysis and Critical Control Point (HACCP) System and Guidelines*.

(4) If the recipient procures eligible commodities that are cereals, groundnuts, or tree nuts, or food products derived from or containing cereals, groundnuts, or tree nuts, the commodities must be tested for aflatoxin and have their moisture content certified.

The maximum acceptable total aflatoxin level is 20 parts per billion, the U.S. Food and Drug Administration action level for aflatoxin in human foods.

(5) If the recipient procures an unprocessed commodity, it must ensure that the commodity has been produced either in the target country or in another developing country within the target region.

(6) If the recipient purchases a processed commodity, it must ensure that the processing took place, and the primary ingredient has been produced, either in the target country or in another developing country within the target region. The primary ingredient is determined on the basis of weight in the case of solid foods, or volume in the case of liquids.

(7) If the recipient purchases eligible commodities through a competitive tender, the recipient must specify the minimally acceptable commodity specifications and food safety and quality assurance standards in the tender. Purchases that are made from commercial wholesalers in a local or regional market must meet the food safety and quality assurance standards specified in paragraphs (b)(2), (3) and (4) of this section.

(8) The recipient must enter into a contract that complies with this paragraph for every local or regional procurement of eligible commodities, other than through food vouchers, from a commodity vendor. The recipient must ensure that the contract between the recipient and the commodity vendor clearly specifies the country of origin and specific market(s) in which the procurement will take place, commodity safety and quality assurance standards, product specifications, price per metric ton, and delivery terms. Recipients will be required to make such contracts available to FAS upon request.

(9) The recipient must enter into a contract with an established inspection service to survey and report on the safety, quality, and condition of all procured commodities, other than those procured through food vouchers, prior to their shipment and distribution. The recipient will be required to submit any survey reports or certificates issued by such inspection service to FAS upon request.

(10) The recipient must enter into a contract with each vendor expected to redeem food vouchers distributed under an agreement that specifies the conditions under which the vouchers will be redeemed for food. The recipient must ensure that beneficiaries use food vouchers to purchase eligible commodities that meet the food safety and quality assurance standards specified in paragraphs (b)(2), (3) and (4) of this section.

(c) The agreement will require the recipient to submit a procurement plan for FAS's approval within the time period specified in the agreement. The procurement plan will include time periods, broken down by month, for commodity procurement, delivery, and distribution and, where applicable, the distribution of food vouchers. The agreement will require the recipient to comply with the procurement plan, as approved by FAS, and will prohibit the recipient from making any changes to the procurement plan without obtaining the prior written approval of FAS.

§ 1590.7 Payments.

(a) If the agreement authorizes the payment of FAS-provided funds, FAS will generally provide the funds to the recipient on an advance payment basis, in accordance with 2 CFR 200.305(b). In addition, the following procedures will apply to advance payments:

(1) A recipient may request advance payments of FAS-provided funds, up to the total amount specified in the agreement. When making an advance payment request, a recipient must provide, for each agreement for which it is requesting an advance, total expenditures to date; an estimate of expenses to be covered by the advance; total advances previously requested, if any; the amount of cash on hand from the preceding advance; and, if necessary, a request to roll over any unused funds from the preceding advance to the current request period. The advance payment request must take into account any program income earned since the preceding advance.

(2) Whenever possible, the recipient should consolidate advance payment requests to cover anticipated cash needs for all food assistance program awards made by FAS to the recipient. A recipient may request advance payments with no minimum time required between requests.

(3) A recipient must minimize the amount of time that elapses between the transfer of funds by FAS and the disbursement of funds by the recipient. A recipient must fully disburse funds from the preceding advance before it submits a new advance request for the same agreement, with the exception that the recipient may request to retain the balance of any funds that have not been disbursed and roll it over into a new advance request if the new advance request is made within 90 days after the preceding advance was made.

(4) FAS will review all requests to roll over unexpended funds from the preceding advance that have not been disbursed and make a decision based on the merits of the request. FAS will consider factors such as the amount of funding that the recipient is requesting to roll over, the length of time that the recipient has been in possession of the

funds, any unforeseen or extenuating circumstances, the recipient's history of performance, and findings from recent financial audits or compliance reviews.

(5) FAS will not approve any request for an advance or rollover of funds if the most recent financial report, as specified in the agreement, is past due, or if any required report, as specified in any open agreement between the recipient and FAS or the Commodity Credit Corporation (CCC), is more than three months in arrears.

(6)(i) A recipient must return to FAS any funds advanced by FAS that have not been disbursed as of the 91st day after the advance was made; provided, however, that paragraphs (a)(6)(ii) and (iii) of this section will apply if the recipient submits a request to FAS before that date to roll over the funds into a new advance.

(ii) If a recipient submits a request to roll over funds into a new advance, and FAS approves the rollover of funds, such funds will be considered to have been advanced on the date that the recipient receives the approval notice from FAS, for the purposes of complying with the requirement in paragraph (a)(6)(i) of this section.

(iii) If a recipient submits a request to roll over funds into a new advance, and FAS does not approve the rollover of some or all of the funds, such funds must be returned to FAS.

(iv) If the recipient must return funds to FAS in accordance with paragraph (a)(6) of this section, the recipient must return the funds on the later of five business days after the 91st day after the funds were advanced, or five business days after the date on which the recipient receives notice from FAS that it has denied the recipient's request to roll over the funds; provided, however, that FAS may specify a different date for the return of funds in a written communication to the recipient.

(7) Except as may otherwise be provided in the agreement, the recipient must deposit and maintain in an insured bank account located in the United States all funds advanced by FAS. The account must be interest-bearing, unless one of the exceptions in 2 CFR 200.305(b)(8) applies, or FAS determines that this requirement would constitute an undue burden. A recipient will not be required to maintain a separate bank account for advance payments of FAS-provided funds. However, a recipient must be able to separately account for the receipt, obligation, and expenditure of funds under each agreement.

(8) A recipient may retain, for administrative purposes, up to \$500 per Federal fiscal year of any interest earned on funds advanced under an agreement. The recipient must remit to the U.S. Department of Health and Human Services, Payment Management System, any additional interest earned during the Federal fiscal year on such funds, in accordance with the procedures in 2 CFR 200.305(b)(9).

(b) If a recipient is required to pay funds to FAS in connection with an agreement, the recipient must make such payment in U.S. dollars, unless otherwise approved in advance by FAS.

§ 1590.8 Transportation of procured commodities.

(a) The recipient must acquire all transportation of procured commodities under the USDA LRP Program. FAS will pay for the transportation, as provided for in the agreement, through an advance payment or reimbursement to the recipient.

(b) A recipient that acquires ocean transportation in accordance with paragraph (a) of this section must comply with the requirements of 46 U.S.C. 55305, regarding carriage on U.S.-flag vessels.

(c) The recipient may only use the services of a transportation company that is legally operating in the target country or another country within the target region, and that would not have a conflict of interest in transporting the commodities.

(d) The recipient must declare in the transportation contract the point at which the ocean carrier or overland transportation company will take custody of the eligible commodities to be transported.

§ 1590.9 Entry, handling, and labeling of procured commodities and notification requirements.

(a) The recipient must make all necessary arrangements for receiving regionally procured commodities in the target country, including obtaining appropriate approvals for entry and transit. The recipient must make arrangements with the target country government for all regionally procured commodities to be imported and distributed free from all customs duties, tolls, and taxes, unless otherwise specified in the agreement.

(b) The recipient must, as provided in the agreement, arrange for transporting, storing, and distributing the procured commodities from the designated point and time where title to the commodities passes to the recipient.

(c) The recipient must store and maintain all of the procured commodities in good condition from the time of delivery at the port of entry or the point of receipt from the commodity vendor(s) until their distribution.

(d)(1) If a recipient arranges for the packaging or repackaging of the procured commodities, the recipient must ensure that the packaging:

- (i) Is plainly labeled in the language of the target country;
- (ii) Contains the name of the procured commodities;

(iii) Contains the name of the country of origin;

(iv) Includes a statement indicating that the procured commodities are being furnished through a project funded by the United States Department of Agriculture; and

(v) Includes a statement indicating that the procured commodities must not be sold, bartered, or exchanged.

(2) If a recipient distributes procured commodities that are prepackaged or not packaged, the recipient must display a sign at the distribution site that includes the name of the procured commodities, the country of origin, a statement indicating that the procured commodities are being furnished through a project funded by the United States Department of Agriculture, and a statement indicating that the procured commodities must not be sold, bartered, or exchanged.

(3) If a recipient distributes food vouchers or cash transfers, the recipient must display a sign at the distribution site that includes a statement indicating that the food vouchers or cash transfers are being furnished through a project funded by the United States Department of Agriculture. The recipient must ensure that all paper vouchers or receipts for electronic vouchers are printed with a statement indicating that the vouchers are being furnished through a project funded by the United States Department of Agriculture. The vouchers must also include a statement indicating that they must not be sold, bartered, or exchanged.

(e) The recipient must ensure that signs are displayed at all activity implementation and commodity, food voucher, or cash transfer distribution sites to inform beneficiaries that funding for the project was provided by the United States Department of Agriculture.

(f) The recipient must also ensure that all public communications in relation to the project, the activities, or the procured commodities, whether made through print, broadcast, digital, or other media, include a statement acknowledging that funding was provided by the United States Department of Agriculture.

(g) FAS may waive compliance with one or more of the labeling and notification requirements in paragraphs (d), (e) and (f) of this section if a recipient demonstrates to FAS that the requirement presents a safety or security risk in the target country. If a recipient determines that compliance with a labeling or notification requirement poses an imminent threat of destruction of property, injury, or loss of life, the recipient must submit a waiver request to FAS as soon as possible. The recipient will not have to comply with such requirement during the period prior to the issuance of a waiver determination by FAS. A recipient may submit a written request for a waiver at any time after the agreement has been signed.

(h) In exceptional circumstances, FAS may, on its own initiative, waive one or more of the labeling and notification requirements in paragraphs (d), (e) and (f) of this section for programmatic reasons.

§ 1590.10 Damage to or loss of procured commodities.

(a) The recipient will be responsible for the procured commodities following the transfer of title to the procured commodities from the commodity vendor(s) to the recipient. FAS may require the recipient to purchase transportation insurance against commodity loss or damage.

(b) A recipient must inform FAS, in the manner and within the time period set forth in the agreement, of any damage to or loss of the procured commodities that occurs

following the transfer of title to the procured commodities to the recipient. The recipient must take all steps necessary to protect its interests and the interests of FAS with respect to any damage to or loss of the procured commodities that occurs after title has been transferred to the recipient.

(c) The recipient will be responsible for arranging for an independent cargo surveyor to inspect any procured commodities transported by ocean upon discharge from the vessel and to prepare a survey or outturn report. The report must show the quantity and condition of the procured commodities discharged from the vessel and must indicate the most likely cause of any damage noted in the report. The report must also indicate the time and place when the survey took place. All discharge surveys must be conducted contemporaneously with the discharge of the vessel, unless FAS determines that failure to do so was justified under the circumstances. For procured commodities shipped on a through bill of lading, the recipient must also obtain a delivery survey. All surveys obtained by the recipient must, to the extent practicable, be conducted jointly by the surveyor, the recipient, and the carrier, and the survey report must be signed by all three parties. The recipient must obtain a copy of each discharge or delivery survey report within 45 days after the completion of the survey. The recipient must make each such report available to FAS upon request, or in the manner specified in the agreement. FAS will reimburse the recipient for the reasonable costs of these services, as determined by FAS, in the manner specified in the agreement.

(d) When procured commodities are transported overland, the recipient will ensure that overland transportation contracts include a requirement that a loading and offloading report be prepared and provided to the recipient. The report must show the

quantity and condition of the procured commodities loaded on the overland conveyance, as well as the time and place that the loading and offloading occurred. The recipient must obtain a copy of the report from the overland transportation company within 45 days after the completion of the commodity delivery. The recipient must make each such report available to FAS upon request, or in the manner specified in the agreement. FAS will reimburse the recipient for the reasonable costs of these services, as determined by FAS, in the manner specified in the agreement.

(e) If procured commodities are damaged or lost during the time that they are in the care of an ocean carrier or overland transportation company:

(1) The recipient must ensure that any reports, narrative chronology, or other commentary prepared by the independent cargo surveyor, and any such documentation prepared by a port authority, stevedoring service, or customs official, or an official of the transit or target country government or the transportation company, are provided to FAS;

(2) The recipient must provide to FAS the names and addresses of any individuals known to be present at the time of discharge or unloading, or during the survey, who can verify the quantity of damaged or lost procured commodities;

(3) If the damage or loss occurred with respect to a bulk shipment on an ocean carrier, the recipient must ensure that the independent cargo surveyor:

(i) Observes the discharge of the cargo;

(ii) Reports on discharging methods, including scale type, calibrations, and any other factors that may affect the accuracy of scale weights, and, if scales are not used, states the reason therefor and describes the actual method used to determine weight;

(iii) Estimates the quantity of cargo, if any, lost during discharge through carrier negligence;

(iv) Advises on the quality of sweepings;

(v) Obtains copies of port or vessel records, if possible, showing the quantity discharged; and

(vi) Notifies the recipient immediately if the surveyor has reason to believe that the correct quantity was not discharged or if additional services are necessary to protect the cargo; and

(4) If the damage or loss occurred with respect to a container shipment on an ocean carrier, the recipient must ensure that the independent cargo surveyor lists the container numbers and seal numbers shown on the containers, indicates whether the seals were intact at the time the containers were opened, and notes whether the containers were in any way damaged.

(e) If the recipient has title to the procured commodities, and procured commodities valued in excess of \$5,000 are damaged at any time prior to their distribution under the agreement, regardless of the party at fault, the recipient must immediately arrange for an inspection by a public health official or other competent authority approved by FAS and provide to FAS a certification by such public health official or other competent authority regarding the exact quantity and condition of the damaged commodities. The value of damaged procured commodities must be determined on the basis of the commodity acquisition, transportation, and related costs incurred by the recipient and paid by FAS with respect to such commodities. The

recipient must inform FAS of the results of the inspection and indicate whether the damaged procured commodities are:

(1) Fit for the use authorized in the agreement and, if so, whether there has been a diminution in quality; or

(2) Unfit for the use authorized in the agreement.

(f)(1) If the recipient has title to the procured commodities, the recipient must arrange for the recovery of that portion of the procured commodities designated as suitable for the use authorized in the agreement. The recipient must dispose of procured commodities that are unfit for such use in the following order of priority:

(i) Sale for the most appropriate use, i.e., animal feed, fertilizer, industrial use, or another use approved by FAS, at the highest obtainable price;

(ii) Donation to a governmental or charitable organization for use as animal feed or another non-food use; or

(iii) Destruction of the procured commodities if they are unfit for any use, in such manner as to prevent their use for any purpose.

(2) The recipient must arrange for all U.S. Government markings to be obliterated or removed before the procured commodities are transferred by sale or donation under paragraph (f)(1) of this section.

(g) A recipient may retain any proceeds generated by the disposal of the procured commodities in accordance with paragraph (f)(1) of this section and must use the retained proceeds for expenses related to the disposal of the procured commodities and for activities specified in the agreement.

(h) The recipient must notify FAS immediately and provide detailed information about the actions taken in accordance with paragraph (f) of this section, including the quantities, values, and dispositions of procured commodities determined to be unfit.

§ 1590.11 Claims for damage to or loss of procured commodities.

(a) The recipient will be responsible for claims arising out of damage to or loss of a quantity of the procured commodities after the transfer of title to the procured commodities from the commodity vendor(s) to the recipient.

(b) If the recipient has title to procured commodities that have been damaged or lost, and the value of the damaged or lost procured commodities is estimated to be in excess of \$20,000, the recipient must:

(1) Notify FAS immediately and provide detailed information about the circumstances surrounding such damage or loss, the quantity of damaged or lost procured commodities, and the value of the damage or loss;

(2) Promptly upon discovery of the damage or loss, initiate a claim arising out of such damage or loss, including, if appropriate, initiating an action to collect pursuant to a commercial insurance contract;

(3) Take all necessary action to pursue the claim diligently and within any applicable periods of limitations; and

(4) Provide to FAS copies of all documentation relating to the claim.

(c) If the recipient has title to procured commodities that have been damaged or lost, and the value of the damaged or lost procured commodities is estimated to be \$20,000 or less, the recipient must notify FAS in accordance with the agreement and

provide detailed information about the damage or loss in the next report required to be filed under § 1590.14(e).

(d)(1) The value of a claim for lost procured commodities will be determined on the basis of the commodity acquisition, transportation, and related costs incurred by the recipient and paid by FAS with respect to such commodities.

(2) The value of a claim for damaged procured commodities will be determined on the basis of the commodity acquisition, transportation, and related costs incurred by the recipient and paid by FAS with respect to such commodities, less any funds generated if such commodities are sold in accordance with § 1590.10(f)(1).

(e) If FAS determines that a recipient has not initiated a claim or is not exercising due diligence in the pursuit of a claim, FAS may require the recipient to assign its rights to pursue the claim to FAS. Failure by the recipient to initiate a claim or exercise due diligence in the pursuit of a claim will be considered by FAS during the review of proposals for subsequent food assistance awards.

(f)(1) The recipient may retain any funds obtained as a result of a claims collection action initiated by it in accordance with this section, or recovered pursuant to any insurance policy or other similar form of indemnification, but such funds must be expended as provided for in the agreement or for other purposes approved in advance by FAS.

(2) FAS will retain any funds obtained as a result of a claims collection action initiated by it under this section; provided, however, that if the recipient paid for the transportation of the procured commodities or a portion thereof, FAS will use a portion of such funds to reimburse the recipient for such expense on a prorated basis.

§ 1590.12 Use of procured commodities, FAS-provided funds, and program income.

(a) A recipient must use the procured commodities, FAS-provided funds, interest, and program income in accordance with the agreement.

(b) A recipient must not use procured commodities, FAS-provided funds, interest, or program income for any activity or any expense incurred by the recipient or a subrecipient prior to the start date of the period of performance of the agreement or after the agreement is suspended or terminated, without the prior written approval of FAS.

(c) A recipient must not permit the distribution, handling, or allocation of procured commodities on the basis of political affiliation, geographic location, or the ethnic, tribal or religious identity or affiliation of the potential consumers or beneficiaries.

(d) A recipient must not permit the distribution, handling, or allocation of procured commodities by the military forces of any government or insurgent group without the specific authorization of FAS.

(e) A recipient must not use FAS-provided funds to acquire goods and services, either directly or indirectly through another party, in a manner that violates country-specific economic sanction programs, as specified in the agreement.

(f) A recipient may sell the procured commodities only if the recipient is disposing of damaged procured commodities as specified in § 1590.10.

(g) A recipient must deposit and maintain all FAS-provided funds and program income in a bank account until they are used for a purpose authorized under the agreement or the FAS-provided funds are returned to FAS in accordance with § 1590.7(a)(6). The account must be insured unless it is in a country where insurance is unavailable. The account must be interest-bearing, unless one of the exceptions in 2 CFR

200.305(b)(8) applies or FAS determines that this requirement would constitute an undue burden. The recipient must comply with the requirements in § 1590.7(a)(7) with regard to the deposit of advance payments by FAS.

(h)(1) Except as provided in paragraph (h)(2) of this section, a recipient may make adjustments within the agreement budget between direct cost line items without further approval, provided that the total amount of adjustments does not exceed ten percent of the Grand Total Costs, excluding any voluntary committed cost sharing or matching contributions, in the agreement budget. Adjustments beyond these limits require the prior approval of FAS.

(2) A recipient must not transfer any funds budgeted for participant support costs, as defined in 2 CFR 200.75, to other categories of expense without the prior approval of FAS.

(i) A recipient may use FAS-provided funds or program income to purchase real or personal property only if local law permits the recipient to retain title to such property. However, the recipient must not use FAS-provided funds or program income to pay for the acquisition, development, construction, alteration or upgrade of real property that is:

(1) Owned or managed by a church or other organization engaged exclusively in religious pursuits; or

(2) Used in whole or in part for sectarian purposes, except that a recipient may use FAS-provided funds or program income to pay for repairs to or rehabilitation of a structure located on such real property to the extent necessary to avoid spoilage or loss of procured commodities, but only if the structure is not used in whole or in part for any religious or sectarian purposes while the procured commodities are stored in it. If the use

of FAS-provided funds or program income to pay for repairs to or rehabilitation of such a structure is not specifically provided for in the agreement, the recipient must not use the FAS-provided funds or program income for this purpose until it receives written approval from FAS.

(j) The recipient must comply with 2 CFR 200.321 when procuring goods and services in the United States. When procuring goods and services outside of the United States, the recipient should endeavor to comply with 2 CFR 200.321 where practicable.

(k) As provided for in the agreement, the recipient must enter into a written contract with each provider of goods, services, or construction work that is valued in excess of the Simplified Acquisition Threshold. Each such contract must require the provider to maintain adequate records to account for all donated commodities, funds, or both furnished to the provider by the recipient. The recipient must submit a copy of the signed contracts to FAS upon request.

§ 1590.13 Monitoring and evaluation requirements.

(a) The recipient will be responsible for designing a performance monitoring plan for the project, obtaining written approval of the plan from FAS before putting it into effect, and managing and implementing the plan, unless otherwise specified in the agreement.

(b) The recipient must establish baseline values, annual targets, and life of activity targets for each performance indicator included in the recipient's approved performance monitoring plan, unless otherwise specified in the agreement.

(c) The recipient must inform FAS, in the manner and within the time period specified in the agreement, of any problems, delays, or adverse conditions that materially

impair the recipient's ability to meet the objectives of the agreement. This notification must include a statement of any corrective actions taken or contemplated by the recipient, and any additional assistance requested from FAS to resolve the situation.

(d) The recipient will be responsible for designing an evaluation plan for the project, obtaining written approval of the plan from FAS before putting it into effect, and arranging for an independent third party to implement the evaluation, unless otherwise specified in the agreement. This evaluation plan will detail the evaluation purpose and scope, key evaluation questions, evaluation methodology, time frame, evaluation management, and cost. This plan will generally be based upon the evaluation plan that the recipient submitted to FAS as part of its application, pursuant to §1590.4(b)(6), unless the notice of funding opportunity specified that an evaluation plan was not required to be included in the application. The recipient must ensure that the evaluation plan:

(1) Is designed using the most rigorous methodology that is appropriate and feasible, taking into account available resources, strategy, current knowledge and evaluation practices in the sector, and the implementing environment;

(2) Is designed to inform management, activity implementation, and strategic decision-making;

(3); Utilizes analytical approaches and methodologies, based on the questions to be addressed, project design, budgetary resources available, and level of rigor and evidence required, which may be implemented through methods such as case studies, surveys, quasi-experimental designs, randomized field experiments, cost-effectiveness analyses, implementation reviews, or a combination of methods;

(4) Adheres to generally accepted evaluation standards and principles;

(5) Uses participatory approaches that seek to include the perspectives of diverse parties and all relevant stakeholders; and

(6) Where possible, utilizes local consultants and seeks to build local capacity in evaluation.

(e)(1) Unless otherwise provided in the agreement, the recipient must arrange for evaluations of the project to be conducted by an independent third party that:

(i) Is financially and legally separate from the recipient's organization; and

(ii) Has staff with demonstrated methodological, cultural and language competencies, and specialized experience in conducting evaluations of international development programs involving agriculture, trade, education, and nutrition.

(2) The recipient must provide a written certification to FAS that there is no real or apparent conflict of interest on the part of any recipient staff member or third party entity designated or hired to play a substantive role in the evaluation of activities under the agreement.

(f) FAS will be considered a key stakeholder in all evaluations conducted as part of the agreement.

(g)(1) The recipient is responsible for establishing the required financial and human capital resources for monitoring and evaluation of activities under the agreement. The recipient must maintain separate budgets for monitoring and evaluation, and separate budget line items for dedicated recipient monitoring and evaluation staff and independent third-party evaluation contracts.

(2) Personnel at the recipient's headquarters offices and field offices with specialized expertise and experience in monitoring and evaluation may be used by the

recipient for dedicated monitoring and evaluation. Unless otherwise specified in the agreement or approved evaluation plan, all evaluations must be managed by the recipient's evaluation experts outside of the recipient's line management for the activities.

(h) FAS may independently conduct or commission an evaluation of a single agreement or an evaluation that includes multiple agreements. A recipient must cooperate, and comply with any demands for information or materials made in connection with any evaluation conducted or commissioned by FAS. Such evaluations may be conducted by FAS internally or by an FAS-hired external evaluation contractor.

§ 1590.14 Reporting and record keeping requirements.

(a) A recipient must comply with the performance and financial monitoring and reporting requirements in the agreement and 2 CFR 200.327 through 200.329.

(b) The recipient must submit financial reports to FAS in accordance with the schedule provided in the agreement. Such reports must provide an accurate accounting of FAS-provided funds, interest earned, program income, and voluntary committed cost sharing or matching contributions.

(c)(1) The recipient must submit performance reports to FAS, in the manner specified in the agreement. These reports must include the information required in 2 CFR 200.328(b)(2), including additional pertinent information regarding the recipient's progress, measured against established indicators, baselines, and targets, towards achieving the expected results specified in the agreement. This reporting must include, for each performance indicator, a comparison of actual accomplishments with the

baseline and the targets established for the period. When actual accomplishments deviate significantly from targeted goals, the recipient must provide an explanation in the report.

(2) The recipient must ensure the accuracy and reliability of the performance data submitted to FAS in performance reports. At any time during the period of performance of the agreement, FAS may review the recipient's performance data to determine whether it is accurate and reliable. A recipient must comply with all requests made by FAS or an entity designated by FAS in relation to such reviews.

(d) Baseline, interim, and final evaluation reports are required for all agreements for development assistance projects, unless otherwise specified in the agreement. A rapid needs assessment and a final evaluation report are required for all agreements for emergency response projects, unless otherwise specified in the agreement. An interim evaluation report is not required for emergency response projects, unless otherwise specified in the agreement. The reports must be submitted in accordance with the timeline provided in the FAS-approved evaluation plan. Evaluation reports submitted to FAS will be made public in an effort to increase accountability and transparency and share lessons learned and best practices.

(e) A recipient must submit reports to FAS, using a form as prescribed by FAS, covering the receipt, handling, and disposition of the procured commodities and, if applicable, food vouchers and cash transfers. Such reports must be submitted to FAS, by the dates and for the reporting periods specified in the agreement, until all of the procured commodities and, if applicable, food vouchers and cash transfers have been distributed and such disposition has been reported to FAS.

(f) If requested by FAS, the recipient must provide to FAS additional information or reports relating to the agreement.

(g) If a recipient requires an extension of a reporting deadline, it must ensure that FAS receives an extension request at least five business days prior to the reporting deadline. FAS may decline to consider a request for an extension that it receives after this time period. FAS will consider requests for reporting deadline extensions on a case by case basis and make a decision based on the merits of each request. FAS will consider factors such as unforeseen or extenuating circumstances and past performance history when evaluating requests for extensions.

(h) A recipient must retain records and permit access to records in accordance with the requirements of 2 CFR 200.333 through 200.337. The date of submission of the final expenditure report, as referenced in 2 CFR 200.333, will be the final date of submission of the reports required by paragraph (e) of this section, as prescribed by FAS. The recipient must retain copies of and make available to FAS all sales receipts, contracts, or other documents related to the procurement of eligible commodities, as well as records of dispatch received from ocean carriers or overland transportation companies.

§ 1590.15 Subrecipients.

(a) A recipient may utilize the services of a subrecipient to implement activities under the agreement if this is provided for in the agreement. The subrecipient may receive procured commodities, FAS-provided funds, program income, or other resources from the recipient for this purpose. The recipient must enter into a written subagreement with the subrecipient and comply with the applicable provisions of 2 CFR 200.331. The recipient must provide a copy of each subagreement to FAS, in the manner set forth in

the agreement, prior to the transfer of any procured commodities, FAS-provided funds, or program income to the subrecipient.

(b) The recipient must include the following requirements in the subagreement:

(1) The subrecipient is required to comply with the applicable provisions of this part and 2 CFR parts 200 and 400. The applicable provisions are those that relate specifically to subrecipients, as well as those relating to non-Federal entities that impose requirements that would be reasonable to pass through to subrecipients because they directly concern the implementation of one or more activities under the agreement. If there is a question about whether a particular provision is applicable, FAS will make the determination.

(2) The subrecipient is prohibited from using FAS-provided funds to acquire goods and services, either directly or indirectly through another party, in a manner that violates country-specific economic sanction programs, as specified in the agreement.

(3) The subrecipient must pay to the recipient the value of any procured commodities, FAS-provided funds, or program income that are not used in accordance with the subagreement, or that are lost, damaged, or misused as a result of the subrecipient's failure to exercise reasonable care.

(4) In accordance with § 1590.19 and 2 CFR 200.501(h), a description of the applicable compliance requirements and the subrecipient's compliance responsibility. Methods to ensure compliance may include pre-award audits, monitoring during the agreement, and post-award audits.

(c) The recipient must monitor the actions of a subrecipient as necessary to ensure that procured commodities, FAS-provided funds, and program income provided to

the subrecipient are used for authorized purposes in compliance with applicable U.S. Federal laws and regulations and the subagreement and that performance indicator targets are achieved for both activities and results under the agreement.

§ 1590.16 Noncompliance with an agreement.

If a recipient fails to comply with a Federal statute or regulation or the terms and conditions of the agreement, and FAS determines that the noncompliance cannot be remedied by imposing additional conditions, FAS may take one or more of the actions set forth in 2 CFR 200.338, including initiating a claim as a remedy. FAS may also initiate a claim against a recipient if the procured commodities are damaged or lost, or the FAS-provided funds, interest, or program income are misused or lost, due to an action or omission of the recipient.

§ 1590.17 Suspension and termination of agreements.

(a) An agreement or subagreement may be suspended or terminated in accordance with 2 CFR 200.338 or 200.339. FAS may suspend or terminate an agreement if it determines that:

(1) One of the bases in 2 CFR 200.338 or 200.339 for termination or suspension by FAS has been satisfied;

(2) The continuation of the assistance provided under the agreement is no longer necessary or desirable; or

(3) Storage facilities are inadequate to prevent spoilage or waste, or distribution of the procured commodities will result in substantial disincentive to, or interference with, domestic production or marketing in the target country.

(b) If an agreement is terminated, the recipient:

(1) Is responsible for the security and integrity of any undistributed procured commodities and must dispose of such commodities only as agreed to by FAS; and

(2) Must comply with the closeout and post-closeout procedures specified in the agreement and 2 CFR 200.343 and 200.344.

§ 1590.18 Opportunities to object and appeals.

(a) FAS will provide an opportunity to a recipient to object to, and provide information and documentation challenging, any action taken by FAS pursuant to §1590.16. FAS will comply with any requirements for hearings, appeals, or other administrative proceedings to which the recipient is entitled under any other statute or regulation applicable to the action involved. In the absence of such other requirements, the requirements set forth in this section will apply.

(b) The recipient must submit its objection in writing, along with any documentation, to the FAS official specified in the agreement within 30 days after the date that FAS notified the recipient that FAS was taking the action being challenged. This official will endeavor to notify the recipient of his or her determination within 60 days after the date that FAS received the recipient's written objection.

(c) The recipient may appeal the determination of the official to the Administrator, FAS. An appeal must be in writing and be submitted to the Office of the Administrator within 30 days after the date of the initial determination by the FAS official. The recipient may submit additional documentation with its appeal.

(d) The Administrator will base the determination on appeal upon information contained in the administrative record and will endeavor to make a determination within 60 days after the date that FAS received the appeal. The determination of the

Administrator will be the final determination of FAS. The recipient must exhaust all administrative remedies contained in this section before pursuing judicial review of a determination by the Administrator.

§ 1590.19 Audit requirements.

(a) Subpart F, Audit requirements, of 2 CFR part 200 applies to recipients and subrecipients under this part other than those that are for-profit entities, foreign public entities, or foreign organizations.

(b) A recipient or subrecipient that is a for-profit entity or a foreign organization, and that expends, during its fiscal year, a total of at least the audit requirement threshold in 2 CFR 200.501 in Federal awards from FAS, is required to obtain an audit. Such a recipient or subrecipient has the following two options to satisfy this requirement:

(1)(i) A financial related audit (as defined in the Government Auditing Standards, GPO Stock #020-000-00-265-4) of the agreement or subagreement, in accordance with Government Auditing Standards, if the recipient or subrecipient receives Federal awards under only one FAS program; or

(ii) A financial related audit of all Federal awards from FAS, in accordance with Government Auditing Standards, if the recipient or subrecipient receives Federal awards under multiple FAS programs; or

(2) An audit that meets the requirements contained in subpart F of 2 CFR part 200.

(c) A recipient or subrecipient that is a for-profit entity or a foreign organization, and that expends, during its fiscal year, a total that is less than the audit requirement threshold in 2 CFR 200.501 in Federal awards from FAS, is exempt from requirements

for a non-Federal audit for that year, except as provided in paragraph (d) of this section, but it must make records available for review by appropriate officials of Federal agencies.

(d) FAS may require an annual financial audit of an agreement or subagreement when the audit requirement threshold in 2 CFR 200.501 is not met. In that case, FAS must provide funds under the agreement for this purpose, and the recipient or subrecipient, as applicable, must arrange for such audit and submit it to FAS.

(e) When a recipient or subrecipient that is a for-profit entity or a foreign organization is required to obtain a financial audit under this section, it must provide a copy of the audit to FAS within 60 days after the end of its fiscal year.

(f) FAS, the USDA Office of Inspector General, or the U.S. Government Accountability Office may conduct or arrange for additional audits of any recipients or subrecipients, including for-profit entities and foreign organizations. Recipients and subrecipients must promptly comply with all requests related to such audits. If FAS conducts or arranges for an additional audit, such as an audit with respect to a particular agreement, FAS will fund the full cost of such an audit, in accordance with 2 CFR 200.503(d).

Dated: June 24, 2016.

Suzanne Palmieri,
Acting Administrator,
Foreign Agricultural Service.

[FR Doc. 2016-15537 Filed: 6/30/2016 8:45 am; Publication Date: 7/1/2016]